

MONTANA PUBLIC DEFENDER COMMISSION

Holiday Inn Downtown
Helena, MT

January 20, 2017

DRAFT MINUTES

Commissioners Present

Mark Parker, (Chair), Billings; Ann Sherwood, Pablo; Larry Mansch, Missoula; Maylinn Smith, Missoula; Mike Metzger, Billings; Margaret Novak, Chester. Brian Gallik, Bozeman, attended by phone

Commissioners Absent

Roy Brown, Billings

Staff Members Present

Bill Hooks, Chief Public Defender; Chad Wright, Chief Appellate Defender; Peter Ohman, Interim Chief Administrator and Training Coordinator; Wendy Johnson, Contract Manager; Carleen Green, Accounting Supervisor; Kyle Belcher, IT Supervisor; Marsha Parr, Case Management Support; Cathy Doyle, Administrative Specialist; Jennifer Streano, Region 2 Deputy Public Defender (Missoula); Jenny Kaleczyc, Region 4 Deputy Public Defender (Helena)

Interested Parties

Jim Taylor, Legal Director, ACLU Montana; Timm Twardoski, Executive Director, AFSCME Montana Council 9

1. Call to Order

Chairman Mark Parker called the meeting to order at 8:30 a.m.

2. Approve Minutes of Previous Meetings (*Action Item)

Commissioner Mansch moved to adopt the minutes of the October 3, November 15, November 30, and December 16, 2016 meetings as drafted. Commissioner Novak seconded and the motion carried.

3. Software Presentations (Case Management and Online Billing Systems)

IT Supervisor Kyle Belcher demonstrated the external portal of the pre-approval and claims functions of the online billing system, as seen by vendors. Both FTE and contract attorneys will use the online pre-approval function, which will prevent vendors from billing for items or amounts that have not been pre-approved. The claims processing function requires separating travel time from legal work. It integrates directly with SABHRS (the state accounting system), reducing calculating errors and improving the claim processing time.

Mr. Belcher moved from the external portal to an internal portal showing the manager's view, with a queue on the dashboard showing claims and pre-approvals waiting for approval. Supervisors can generate numerous reports, allowing them to make more informed management decisions. The reporting is also aiding in the development of internal soft caps, which are still being refined.

Contract Manager Wendy Johnson commented that although the kinks are still being worked out, overall the feedback on the new system has been very positive. Chief Public Defender Bill Hooks said this is a cutting-edge system; Mr. Belcher, Ms. Johnson and the accounting team deserve a lot of credit for their vision. Chairman Parker asked about the security of the system, including internal firewalls for conflicts.

Mr. Belcher replied that it is hosted by state ITSD, which has remote backup data centers and is protected within the state's firewall. The online billing system is structured similarly to the case management program, where each region is a separate business unit, with internal firewalls applied by region. Ms. Johnson can see all regions, but not conflicts. Both systems (online billing and case management) have the *ability* to log who has viewed a file, but logging views isn't turned on because it would create voluminous amounts of records. Both systems do, however, log alterations.

Mr. Belcher gave a brief overview of the case management program. Business rules require staff to enter certain information, and provide for data validation to boost the integrity of the reporting generated by the program. Document generation and synchronization with the Outlook calendar are key features. Every new attorney and staff member is trained, but the vast differences in experience levels make training challenging, especially when conducted remotely. Commissioner Sherwood asked if this is still the best software option for a case management system. Mr. Belcher said that it is working well. State procurement encouraged OPD to go out for bid again, but the cost of a new system compared to the maintenance costs for this system made it unreasonable at this point. It will probably be necessary to go through the RFP process and migrate to something new within the next five years.

4. Legislative Issues

A. Status of Task Force Legislation

Chairman Parker said that the Task Force on Public Defender Operations has a slate of seven bills, but he has focused mostly on the "big bill" to reorganize the office and make the Commission advisory (HB 77). There are a host of sub issues being debated among the parties and the governor's office, but he can report that he has not seen malice, cynicism or petty politics. It seems that everyone is concentrating on the Gideon mission, and how best to get it done with limited resources. Chief Hooks expects several amendments to HB 77. The bill related to the workload study, HB 58, was tabled in committee due to the price tag, but it may reappear in an amendment to HB 77 without any funding. Chief Hooks thinks HB 77 has a good chance of passing because it has bipartisan support and the support of the executive branch. He said that OPD's scheduled budget hearing has been postponed until February so everyone can see how the Task Force bills are progressing and how that might impact the budget.

The Commission discussed the possibility that HB 77 might be amended to limit or exclude the Commission's role in selecting an Executive Director. Some members are concerned that without their recommendations, the governor's appointee might not have the necessary qualifications. Commissioner Sherwood moved that the Commission endorse the original language in HB 77: "The public defender advisory commission . . . shall submit to the governor a list of three nominees for director of the office of state public defender. If the governor does not hire any individual from the initial list, the governor may request of second list of three nominees and shall hire the director from that list." Commissioner Smith seconded. Chairman Parker clarified that the Commission opposes any amendments to the bill that change this language. He invited public comment on the motion.

Timm Twardoski, Executive Director of AFSCME Montana Council 9, said the Commission should be prepared for opposition to their input once they become advisory. Jim Taylor, ACLU Montana Legal Director, suggested approaching the bill sponsor to keep the language as is. Chief Hooks said that as an executive branch agency, any resolution the Commission makes should be made first to the governor's office.

The question was called and the motion carried unanimously. Chairman Parker will deliver the message to the executive and to Representatives Brodehl and Dudik.

The holistic defense bill, HB 89, has been amended to require OPD to establish pilot projects in up to four offices within existing resources. The pilot projects will build on current efforts, and Chief Hooks believes the bill has a good chance of passing. Commissioner Sherwood commented that the community assessment and evaluation of each project is specific to the communities, not a cookie cutter to be applied to each program. She will be happy to offer technical assistance in designing the projects if the bill passes.

Chief Hooks reviewed the status of the other Task Force bills making their way through the process. All the Task Force concepts are still around in some fashion, some having been blended into HB 77.

B. 2019 Biennium Executive Budget (HB 2)

Mr. Twardoski distributed addendums to the two collective bargaining agreements that show the pay rates for the current biennium. He said that this is the first time since agency inception that funding for the pay matrix was not included in OPD's budget request. He asked the agency to incorporate the pay matrix into the request before the budget subcommittee even though it is not part of the governor's budget, and to be prepared to tell the committee what the cost will be. Mr. Twardoski said the existing pay matrix and funding move forward until there are new collective bargaining agreements, and not funding the pay matrix could lead to an unfair labor practice.

Chief Hooks said there was a request for additional funding for salary adjustments in the budget request the Commission reviewed and approved. Salary and benefits are always negotiated subject to the agency's ability to pay, and that language is a source of tension. However, the request was made and Chief Hooks recognizes the need to take care of OPD employees during the budget hearing. Mr. Twardoski is correct that the request did not make it into the governor's budget. Chairman Parker and Mr. Twardoski agreed to treat this as informational; no Commission action is needed.

Interim Chief Administrator Peter Ohman, a member of the interim Commission on Sentencing, gave an update on the proposals advanced by the commission. Some of their proposed bills would impact OPD and its clients, including potential reductions in caseload. HB 133 creates a tiered sentence structure, putting more nuance in sentencing, especially regarding property and drug offenses. SB 63 relates to supervision and could result in fewer revocations. Another bill proposes to make the parole board full-time professionals instead of volunteers to make parole decisions more objective and consistent. Commissioner Sherwood said that shortening the probationary period is a positive thing; people are going to prison on revocations for failing to meet conditions, not for reoffending.

5. Current Budget Issues

A. Financial Compliance Audit

Mr. Ohman reported that former Chief Administrator Scott Cruse appeared for OPD at the Legislative Audit Committee meeting in December. The committee had four audit recommendations. The first one relates to the ongoing issue with collecting public defender fees. The agency partially concurred with this finding and hopes a solution will be worked out during the legislative session.

The agency concurred with the other three recommendations—to develop policy around the online billing system, to implement administrative rules regarding proficiency determinations for contract attorneys, and to follow state law when there is actual or suspected fraud or theft of state property.

B. 2017 Biennium Fiscal Update

Mr. Ohman said there hasn't been much change in the financial forecast; the shortfall is still expected to be in the \$2-2.5 million range. The regions have reduced the number of new cases being

assigned to contractors, but there has not been much change in the conflict program. It is too soon to tell what the financial impact of the mitigation plan will be.

C. Mitigation Plan (*Action Item)

a. REALLOCATE UNUSED NAPD SITE VISITS FUNDS

Ms. Johnson and Mr. Belcher requested that the Commission reallocate approximately \$8,000 of unused discretionary funds originally set aside to fund technical assistance from the National Association for Public Defense (NAPD) to further enhance the online billing system.

Possible enhancements include enabling transcriptionists and expert witnesses to use the online system; basing soft caps on individual charges instead of case types; and additional management tools. However, the amount they are requesting would not fund all of these changes; that would cost about \$20,000. Commissioner Metzger moved to approve the reallocation of funds. Commissioner Gallik seconded.

Commissioner Novak thinks the agency needs to continue to make a good faith effort to mitigate the budget shortfall by using all available funds for mitigation. Commissioner Smith looks at the online system as being cost-saving by increasing efficiencies. Chairman Parker asked if this would improve the financial reporting. Accounting Supervisor Carleen Green said that statutorily required financial reporting comes from SABHRS, the state accounting system, not from the online billing system. Mr. Belcher added this would be a step towards creating a system capable of various types of ad hoc reporting integrating OPD's multiple information systems. The question was called and the motion carried unanimously.

b. REDUCE HOURLY RATE FOR CONTRACTOR "WINDSHIELD" TIME

The proposal to modify the hourly rate for contractor travel time is a suggestion intended to help mitigate the projected shortfall. The idea is that driving is a different level of work than providing legal services. Ms. Johnson summarized the negative feedback she received from contractors regarding the proposal and noted that a different rate for windshield time would require additional modifications (at additional cost) in the online billing system. The Commission agreed that it is good to continue to look for cost savings, but did not act on the proposal.

Other ideas for improving cost effectiveness include capping the number of hours that can be billed per day or week, and pushing for greater acceptance of video appearances.

Mr. Ohman said the current estimate is still that the agency will run out of money April 15. At the November 30 meeting, there was discussion of stopping all contract work on all cases at a certain date. He encouraged communication with the contractors as that date approaches. Chairman Parker and Chief Hooks agreed that communication with contractors early and often is important. Ms. Johnson has been communicating regularly with the contract attorneys by email following each Commission meeting.

Commissioner Sherwood summarized the responses from the regional deputies to the questions commissioners asked at the December 16 meeting.

1. What factors contributed to the budgetary shortfall?

Being underfunded since the beginning of the agency; rise in DN cases; meth and other drugs; prosecution and police continue to grow creating increased caseload; lack of long-term planning; being reactive rather than proactive.

2. *What steps have you taken to implement the mitigation plan?*

Using other funding sources for mental health evaluations

3. *Do you have other ideas for mitigation?*

Decriminalization of certain misdemeanors; diversions; stopping treatment court representation; prohibit charging OPD for discovery; long-range planning; moving away from the reactive approach; restructuring the Major Crime Unit; reducing reliance on contract attorneys as part of long-range planning instead of as an emergency measure.

There were also comments regarding the need for better mentoring. Commissioner Smith was surprised at the amount of positivity. Commissioner Sherwood said that long-range planning will be important once the restructuring is done.

D. *Wage Adjustment for Chief Public Defender and Chief Appellate Defender (.50/hour) (*Action Item)*

Classified employees will receive a statutory pay adjustment of 50 cents per hour effective the first day of the first complete pay period that includes January 15, 2017. Commissioner Metzger moved to increase pay for Chief Hooks and Chief Wright by 50 cents per hour effective the same date. Commissioner Novak seconded and the motion carried.

6. **Public Comment**

Mr. Taylor requested a copy of the regional responses that Commissioner Sherwood summarized; Commissioner Sherwood will provide it. Mr. Taylor asked several questions relating to metrics on refusing cases, how many times FTE attorneys report that they can't take on new cases, and updated case information. Chief Hooks said much of this information is available in his quarterly staff report posted on the website. Mr. Taylor also requested transparency in the development of soft caps. Ms. Johnson said that at this stage she is requesting input from the regional deputies to see if the proposed caps are in the ballpark. The next step will be to open it up to discussion with the contract attorneys.

Chairman Parker said that in the future, questions for staff should be submitted 24 hours in advance.

Mr. Taylor reported that ACLU Montana will be downsizing, and he has decided not to participate in a down-sized agency. He will be moving on in the summer, and has enjoyed his work with the Public Defender Commission. Chairman Parker said that Mr. Taylor has been a great asset to the state and the Commission. He asked Mr. Taylor not to move on without coming back for an appropriate honor.

Region 4 Deputy Public Defender Jenny Kaleczyc (Helena) provided a status update on her region. The recruitment for modified positions as part of the mitigation plan produced no contract attorney applicants and resulted in hiring mostly brand new attorneys. So far five attorneys have notified her in writing that they cannot take more cases, and others have notified her verbally. Some of her experienced attorneys have resigned, and others are looking for new jobs. She asked the Commission to give her region the authority to contract out cases to alleviate the situation. Ms. Kaleczyc says their workloads have doubled and it is getting worse each month. Her people are burning out and not serving the clients.

Chairman Parker invited Fritz Gillespie to come forward. He thanked former Chairman Gillespie for his service, and presented Mr. Gillespie with a letter of appreciation and a plaque on behalf of the entire Commission. Mr. Gillespie expressed his concerns for the future of the Commission, the agency, and its clients in the current political environment, and said he will continue to be with OPD in spirit.

7. Committee Reports

A. Personnel Committee—Performance Evaluation Process

Performance evaluations for the Commission's direct reports are usually conducted in the fall; they are overdue. Commissioners Novak, Mansch and Sherwood are the current members of the committee. They will schedule a committee meeting to review the process. Chairman Parker noted that if HB 77 passes, the reorganization would be effective July 1.

B. Strategic Planning Committee—Quarterly Plan Review

Chief Hooks said that the program managers are doing quarterly staff reports on the timetables and measurable objectives identified in the strategic plan. He will connect funding requests with goals and timetables as part of the presentation to the budget subcommittee.

8. Public Comment

There was no additional public comment.

9. Old Business/New Business (*Action Items)

Commissioner Novak asked if there is anything to be done regarding the matter of the career ladder not being included in the budget request. Chief Hooks said that he intends to meet with Mr. Twardoski so that they have the same level of knowledge. It is certainly his understanding and intent to fight for appropriate budget allocations for staff.

Commissioner Novak addressed Ms. Kaleczyc's request for authorization to assign cases to contractors regardless of the mitigation plan. Commissioner Sherwood thinks that should be a management decision. Chief Hooks agreed, and he has authorized Ms. Kaleczyc to contract out a specific case after a thorough review. Those decisions are best made at local level, and he can provide whatever reports the Commission wants to determine if he is acting appropriately.

Commissioner Sherwood asked if there is any action the Commission needs to take to fill the three vacancies on the Commission. There is not; the openings have been posted to the Governor's Boards and Commissions website and the governor's office will handle the process.

Chairman Parker has been on the job as chair for 34 days. He said everyone has been helpful at the office, but he has heard from a lot of unhappy people. His only response is that our hands are largely tied until the legislature determines what the agency will look like and how much funding it will have. He believes they will do what is right for the core mission.

Commissioner Metzger said that employees should be actively encouraged to contact their legislators, so they can hear from the people who are struggling to provide services. Chief Hooks said that a message went out from the union encouraging employees to contact legislators, and the regional deputies are working with judges and prosecutors in their communities.

A. Mitigation Plan (*Action Item)

B. Wage Adjustments (*Action Item)

These items were acted on previously.

10. Adjourn

The meeting adjourned at 12:55 p.m.

The next meeting is scheduled for April 21, 2017, location TBD